

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

UNITED STATES OF AMERICA,

v.

MICHAEL ANTHONY BARR and
NADYA IVETTE DIAZ,

Defendants.

CIVIL ACTION FILE

NO. 4:17-CR-0038-HLM-WEJ

NON-FINAL REPORT AND RECOMMENDATION

This matter is before the Court on defendant pro se Michael Anthony Barr's Motion to Dismiss for Prosecutorial Misconduct and Violations of the Grand Jury Clause of the Fifth Amendment [149]. Mr. Barr generally argues that the presence of government attorneys in grand jury proceedings violates the Fifth Amendment of the Constitution. (Id.)

Rule 6(d) of the Federal Rules of Criminal Procedure expressly states that government attorneys may "be present while the grand jury is in session." Fed. R. Crim. P. 6(d)(1). Moreover, Mr. Barr's contention that Rule 6 violates the Fifth Amendment is without merit. The Fifth Amendment provides, in relevant part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . ." U.S. Const. amend. V.

As the court in United States v. McLain, 559 F. Supp. 2d 983 (D. Minn. 2008) (adopting R. & R.) explained:

The Fifth Amendment does not state whether or not prosecutors may be present in the grand jury room. The Supreme Court has held that Congress has “undoubted power to regulate the practice and procedure of federal courts” which it may exercise consistently with “the statutes or Constitution of the United States.” Sibbach v. Wilson & Co., 312 U.S. 1, 9–10, 61 S. Ct. 422, 85 L. Ed. 479 (1941). Pursuant to this power, Congress passed the Rules Enabling Act of 1934 which gave the Supreme Court the power to prescribe general rules of court procedure. United States v. Navarro-Vargas, 408 F.3d 1184, 1189 (9th Cir. 2005). The Supreme Court, in turn, established the Federal Rules of Criminal Procedure which, in part, govern grand jury procedure. Id. at n. 6. Rule 6(d)(1) provides that the attorneys for the government may be present when the grand jury is in session.

Id. at 991-92. Thus, defendant Barr’s Motion is without merit. Accordingly, the undersigned **RECOMMENDS** that Mr. Barr’s Motion to Dismiss for Prosecutorial Misconduct and Violations of the Grand Jury Clause of the Fifth Amendment [149] be **DENIED**.

SO RECOMMENDED, this 23rd day of May, 2019.



WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE